IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 10333 OF 2004

SHILPA RAMESH KARALEY ... PETITIONER

Versus

VARSHA SWARNARAJ KOCHAR .. RESPONDENT

Mr. Hitesh Jain i/b Udwadia & Udeshi for petitioner

Mr. V. G. Mujumdar for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-7-3-2005

P.C.

The original tenant – defendant has filed this writ petition assailing concurrent finding of fact returned by the courts below against her on the question of non-user of the suit premises by her and on the question of bonafide and reasonable requirement of the landlord.

2. I have heard the learned counsel appearing for the petitioner. He contended that the concurrent finding of fact is perverse and needs to be

set aside by this Court.

3. I am unable to agree with him. In the cross-examination the defendant has clearly admitted that she is having her own big premises. Admittedly the petitioner is in possession of a row house known as Grafician Paradise. She has admitted that her younger daughter goes to school from Grafician Paradise. So far as the plaintiff is concerned both the courts have held that there are 14 members in her family and the present accommodation is not sufficient for them. On comparative hardship also both the courts have rightly held against the defendant.
4. In view of this in my opinion, decrees passed by both the courts deserve to be maintained. No interference is necessary. Hence the petition is rejected.
5. At this stage the learned counsel for the petitioner says that the petitioner wants to assail this order in the Supreme Court. Hence the impugned decree be stayed. Mr. Mujumdar opposes this.
6. In the facts of the case the operation of the impugned decree is stayed for a period of four weeks on the petitioner and every adult member of her family filing the usual undertaking within two weeks from today in this court that in case within 4 weeks the petitioner does not get any favourable order from the Supreme Court, she shall vacate the suit premises and handover vacant and unencumbered possession to the respondent.

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